

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NAU COUNTRY INSURANCE
COMPANY,

Case No.

Plaintiff,

Hon.

v.

COMPLAINT

FRANK M. WOOD, as the Director
of the National Appeals Division,
and ALT'S DAIRY FARM, LLC,

Defendants.

Steven D. Pattee (Minnesota Reg. #269918)
Tewksbury & Kerfeld
Attorneys for Plaintiff
88 S. Tenth Street, Suite 300
Minneapolis, MN 55403
(612) 334-3399
spattee@tkz.com

Paul A. Albarrán (P82031)
Varnum LLP
Co-Counsel for Plaintiff
Bridgewater Place, P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000
paalbarran@varnumlaw.com

NOW COMES, Plaintiff NAU Country Insurance Company (hereinafter "NAU") and for
its Complaint in support of judicial review, states and alleges as follows:

1. Plaintiff now is, and all times mentioned, was a corporation organized and existing
under the laws of the State of Minnesota with its principle office in the City of Ramsey, State of
Minnesota.

2. Upon information and belief, Defendant Frank M. Wood, is the Director of the National Appeals Division of the U.S. Department of Agriculture and is made a party hereto in his official capacity. Director Wood may be served with process at the Headquarters of the National Appeals Division located at 1320 Braddock Place, Alexandria, VA 22314.

3. Upon information and belief, Alt's Dairy Farm, LLC is a limited liability company organized and existing under the laws of the State of Michigan. Alt's Dairy Farm, LLC's principal office is located at 1632 Six Mile Road NW, Cornstock Park, MI 49321. Further, upon information and belief, all members of the limited liability company are domiciled in the State of Michigan.

4. The jurisdiction of this Court is invoked because this case involves a question of Federal law, namely, the interpretation of the Federal Crop Insurance Act and policies and procedures promulgated thereunder, as well as 7 CFR Part 11, Subpart A § 11.13 providing for judicial review of final determinations of the National Appeals Division.

5. NAU has standing to bring this action pursuant to 7 CFR Part 11, Subpart A § 11.13 as an interested party to a proceeding held in the National Appeals Division which adjudicated NAU's rights and responsibilities under the Federal Crop Insurance Act and the policies and procedures promulgated thereunder.

FACTUAL BACKGROUND

6. NAU and Defendant Alt's Dairy Farm, LLC entered into a policy of crop insurance for the 2017 growing season.

7. Following the 2017 apple growing season, Defendant sought indemnity under the policy.

8. NAU denied Defendant's claim for indemnity under the policy.

9. Alt's Dairy Farm timely initiated arbitration proceedings as required under Paragraph 20 of the common crop insurance policy.

10. On January 22 and 23, 2020, the parties arbitrated the claim before Scott Brinkmeyer, who was duly appointed under the rules of the American Arbitration Association.

11. After considering the evidence submitted by the parties in the form of exhibits, testimony of witnesses, and arguments of counsel, both during the hearing and in written comments in closing briefs after the evidentiary hearing, Mr. Brinkmeyer issued an Award of Arbitrator in favor of NAU, dated March 11, 2020.

12. NAU made a motion to confirm the arbitration award before this Court, which was granted (see U.S. District Court Case No. 1:20-cv-00597). Alt's Dairy Farm, LLC appealed that Order to the Sixth Circuit Court of Appeals which affirmed the District Court's decision by Opinion dated January 11, 2023. (See Sixth Circuit Court of Appeals Case No. 21-2792).

13. Absent an appeal to the United States Supreme Court, the Arbitration Award is final and cannot be challenged.

14. At the same time the District Court proceedings were in process, Alt's Dairy Farm, LLC sought a finding under ¶ 20(i) of the Basic Provisions of the applicable common crop insurance policy from the Risk Management Agency.

15. The Risk Management Agency considered the request and issued a finding which held that NAU violated policy and procedures; however, Alt's Dairy Farm, LLC did not receive indemnity in a lesser amount due to the violation of policy and procedures; thus, Alt's Dairy Farm, LLC was not entitled to bring a claim for attorney's fees or other remedies under ¶ 20(i) of the Basic Provisions.

16. Alt's Dairy Farm, LLC appealed that decision to the National Appeals Division.

17. Following hearing, a Judicial Officer of the National Appeals Division found the determination made by the Risk Management Agency was in error because NAU violated policy and procedure which ultimately led to financial damages on the part of Alt's Dairy Farm, LLC.

18. The Risk Management Agency appealed the Administrative Law Judge's decision to the Director of the National Appeals Division, Defendant Frank M. Wood, who upheld the decision of the Administrative Law Judge.

19. The Agency asked the National Appeals Division Director Frank M. Wood to reconsider his decision.

20. On or about January 3, 2023, the Director of the National Appeals Division denied the request for reconsideration.

21. NAU is a party whose rights and obligations have been adjudicated by the Agency, the National Appeals Division, and the Director. Further, NAU's rights have been detrimentally affected by the decisions of Defendant Frank M. Wood who was acting in his official capacity.

22. Alt's Dairy Farm, LLC is a party whose rights and obligations have been adjudicated by the Agency, the National Appeals Division, and the Director; thus, Alt's Dairy Farm, LLC is an interested party to this action.

23. 7 CFR Part 11, Subpart A § 11.13 provides for the judicial review of a final decision of the National Appeals Decision. NAU brings this action seeking judicial review of the Director's determination.

24. The Director's decision was in error because it is contrary to the Arbitration Award which determined Alt's Dairy Farm, LLC was paid the proper amount of indemnity under the applicable policy terms and procedures; therefore, Alt's Dairy Farm, LLC is not entitled to claim attorney's fees, punitive damages, exemplary damages or any other damage.

WHEREFORE, NAU Country Insurance Company respectfully requests the Court to stay the implementation of the decision of the Director of the National Appeals Division, overturn the Director's decision and denial of reconsideration request to reinstate the initial findings of the Risk Management Agency, and further to find that Alt's Dairy Farm, LLC is not entitled to make a claim for extra contractual damages as allowed by ¶ 20(i) of the Basic Provisions of the applicable insurance policy.

Respectfully submitted,

Dated: February 1, 2023

By: /s/ Paul A. Albarrán
Steven D. Pattee (Minnesota Reg. #269918)
Tewksbury & Kerfeld
88 South Tenth Street, Suite 300
Minneapolis, MN 55403
(612) 334-3399
spattee@tkz.com

Paul A. Albarrán (P82031)
Varnum LLP
Bridgewater Place, P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000
paalbarran@varnumlaw.com

20633531.1